

**NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED CHANGES
IN THE REGULATIONS PERTAINING TO
METHYL BROMIDE FIELD FUMIGATIONS**

Pursuant to the requirements of Government Code section 11346.8(c), and section 44 of Title 1 of the California Code of Regulations, the Department of Pesticide Regulation (DPR) is providing notice of changes made to the proposed text of sections 6450, 6450.1, 6450.2, and 6784 of Title 3 of the California Code of Regulations. These changes are in response to comments received during the public comment period. The public comment period on the originally proposed regulatory action closed on December 18, 2003. The Director finds that the modifications are sufficiently related to the original text of the proposed action. The modified text is being made available to the public for 15 days, during which written comments on the modifications will be received as provided in section 11346.8(c) of the Government Code.

DPR will accept written comments relevant to the modifications between April 27, 2004, and 5:00 p.m. on May 12, 2004. Written comments relevant to the modifications may be sent via e-mail <dpr03004@cdpr.ca.gov> or may be directed to: Ms. Linda Irokawa-Otani, Department of Pesticide Regulation, 1001 I Street, P.O. Box 4015, Sacramento, California 95812-4015. FAX: (916) 324-1452.

In response to the comments received, DPR has made several sufficiently related changes to the text from that which was originally proposed. DPR also made other minor changes for grammatical and "plain English" reasons. The changes are listed below:

- In section 6450, the phrase "supervising the fumigation operation" has been added to clarify that this is considered a fumigation-handling activity.
- In subsection 6450(a), reference to subsection 6784(b)(6) has been changed to section 6784(b)(2)(C).
- DPR revised subsection 6450(d) to allow an application block to exceed 40 acres only if approved by the Director. With additional restrictions, the Director has determined that an application block over 40 acres could be allowed while continuing to protect the public and agricultural employees from possible acute methyl bromide exposure. The Director would provide the county agricultural commissioner with additional requirements to assist him/her in conditioning the restricted materials permit.
- Subsection 6450(e) specifies permeability factors for tarpaulins used in fumigations. DPR revised this subsection to allow an exception to these requirements for experimental research purposes covered under a valid research authorization issued pursuant to section 6260.

- DPR has modified the notification requirements. Section 6450.1(b)(1) has been revised to add the requirement that when written notification is given, it shall be in both English and Spanish. DPR believes it is a reasonable requirement without being overly burdensome to property operators. The section also allows the commissioner to require other means of communication to allow for communication in other languages. The overall intent of this section is to ensure that notification is provided to people in a language they can understand. Also, section 6450.2(g) has been modified to require notification to be given to employees on adjoining agricultural properties be in manner that the person can understand. This is consistent with other employee notification requirements.
- In subsection 6450.2(a), the document *Methyl Bromide Field Fumigation Buffer Zone Determination, Est. 6/03*, which is incorporated by reference, has been revised. DPR revised the buffer zone requirements (emission ratios in Table 1) for tarp/deep/broadcast fumigations specified in *Methyl Bromide Field Fumigation Buffer Zone Determination, Est. 2/04*. The revision is based on new monitoring data submitted to DPR. This document, *Methyl Bromide Field Fumigation Buffer Zone Determination, Est. 2/04*, is hereby incorporated by reference and is available from the Department upon request.
- DPR has revised the minimum inner buffer zone in subsections 6540.2(a) and 6540.2(e)(1) to 30 feet for limited acreages and use rates. The modeling procedures that established the buffer zone tables indicated at small acreage and use rates that no buffer zone was needed. DPR established a uniform minimum buffer zone of 50 feet. The buffer zone table continues to maintain the minimum buffer zone of 50 feet but extrapolated back to 30 feet in some limited instances. DPR has determined that this reduction from 50 feet to 30 feet will continue to provide adequate protection from possible acute methyl bromide exposure hazards to the public and agricultural employees.
- Subsections 6450.2(e)(3)(B) and (i) have been revised primarily for clarity.
- Supervising the fumigation operation has been clarified as a fumigation-handling activity in section 6450; and therefore, DPR revised work-hour tables one and two in section 6784(b)(3) to include work hours for "supervising." Additionally, subsection 6784(b)(3)(B) was revised to clarify that the employee's total workdays restriction applies when performing fumigation-handling activities.
- Subsections 6784(b)(4) and (5), which pertain to tarpaulin cutting, removal, and repair, have been revised primarily for clarity and consistency.
- Originally proposed subsection 6784(b)(6) has been revised and placed into new subsection 6784(b)(2)(C). The change removed the sentence, "Any requirements for respiratory protection on the product label shall not be superceded by this regulation." This requirement is already stated in section 6700.

Current wording of the regulation is shown in normal type. Originally proposed additions are shown by underline. Originally proposed deletions are shown by ~~strikeout~~. "Shaded Area" indicates language not in existing emergency language. New wording to be added by the modifications is shown in **bold double underline**. New proposed deletions are shown in ~~*italics and strikeout*~~.

All written comments received by 5:00 p.m. on May 12, 2004, which pertain to the indicated changes, will be reviewed and considered in this rulemaking. Please limit your comments to the modifications of the text.

Paul Helliker, Director
Department of Pesticide Regulation

Date